

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

JARROD MCKINNEY,

Plaintiff,

v.

No. 2:21-cv-00212-RWS

THOMAS J. VILSACK, in his official capacity
as Secretary of Agriculture,
et al.,

Defendants.

STATUS REPORT

In accordance with the Court's August 30, 2021, Order, ECF No. 40, Defendants respectfully submit this status report.

1. Plaintiff in this action challenges Section 1005 of the America Rescue Plan Act of 2021. Because Plaintiff is a member of classes certified by the District Court for the Northern District of Texas in *Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.), that similarly challenge the same statutory provision, Defendants moved for, and the Court granted, a stay of this action pending the outcome of the *Miller* litigation. *See* ECF No. 40 (Aug. 30, 2021).
2. Plaintiff subsequently moved in the *Miller* litigation to opt out of the certified classes. *See* Motion to Opt Out of Certified Classes, *Miller*, ECF No. 78 (Sept. 3, 2021). The *Miller* court denied the motion, and Plaintiff remains a member of the *Miller* classes. *See* Order, *Miller*, ECF No. 100 (Oct 13, 2021).
3. On September 22, 2021, the *Miller* plaintiffs filed a Second Amended Complaint which eliminated the non-class claims, narrowing the litigation to the constitutional and statutory challenges to § 1005. *See* Second Am. Compl., *Miller*, ECF No. 87 (Sept. 22, 2021). On November 12, 2021, the *Miller* plaintiffs filed a Third Amended Complaint which eliminated the statutory challenge, such that the class pursues only an equal protection

challenge to § 1005. *See* Third Am. Compl., *Miller*, ECF No. 135 (Nov. 12, 2021). Defendant answered the Third Amended Complaint on November 26, 2021. *See* Answer, *Miller*, ECF No. 140 (Nov. 26, 2021).

4. Currently pending before the *Miller* court is a motion to intervene as Defendants by the Federation of Southern Cooperatives/Land Assistance Fund. *See* Motion to Intervene, *Miller*, ECF No. 93 (Oct. 12, 2021).
5. The discovery and briefing schedule in the *Miller* litigation is governed by that court's September 22, 2021, scheduling order. *See* Order, *Miller*, ECF No. 85 (Sept. 22, 2021). Under the terms of that order, the parties will complete summary judgment briefing on April 1, 2022. *Id.*

Dated: November 29, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, a copy of the foregoing notice was filed electronically via the Court's ECF system, which effects service on counsel of record.

/s/Michael F. Knapp
Michael F. Knapp
Trial Attorney